

**ASSEMBLY BILL**

**No. 1421**

**Introduced by Assembly Member Cogdill**

February 21, 2003

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An act to amend Section 63036 of the Government Code, and to amend Section 1720 of the Labor Code, relating to public works, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1421, as introduced, Cogdill. Public works: prevailing wage.

Existing law, the Bergeson-Peace Infrastructure and Economic Development Bank Act, establishes the California Infrastructure and Economic Development Bank in the Technology, Trade, and Commerce Agency. The act requires public works financed by the bank to comply with certain laws applicable to payment of prevailing wages on public works.

This bill would exempt those public works financed through the use of industrial development bonds under the California Industrial Development Financing Act from compliance with those laws relating to payment of prevailing wages.

Existing law generally defines “public works” to include construction, alteration, demolition, installation, or repair work done under contract and paid for in whole or in part out of public funds. The phrase “Paid for in whole or in part out of public funds” is defined to mean certain payments, transfers, credits, loans, reductions, waivers, and performances of work, not including those for certain types of specified housing projects.

This bill would redefine public works to exclude installation and would eliminate the definition of, as well as certain exemptions and

exclusions from, the phrase “paid for in whole or in part out of public funds.”

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: <sup>2</sup>/<sub>3</sub>. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 63036 of the Government Code is  
2 amended to read:

3 63036. It is the intent of the Legislature that the activities of  
4 the bank be fully coordinated with any future legislative plan  
5 involving growth management strategies designed to protect  
6 California’s land resource, and ensure its preservation and use it  
7 in ways which are economically and socially desirable. Further, all  
8 public works financed pursuant to this division, ~~including those~~  
9 ~~projects financed through the use of industrial development bonds~~  
10 ~~under Title 10 (commencing with Section 91500)~~, shall comply  
11 with Chapter 1 (commencing with Section 1720) of Part 7 of  
12 Division 2 of the Labor Code.

13 SEC. 2. Section 1720 of the Labor Code is amended to read:

14 1720. ~~(a)~~—As used in this chapter, “public works” means:

15 ~~(1)~~—

16 (a) Construction, alteration, demolition, ~~installation~~, or repair  
17 work done under contract and paid for in whole or in part out of  
18 public funds, except work done directly by any public utility  
19 company pursuant to order of the Public Utilities Commission or  
20 other public authority. For purposes of this ~~paragraph~~ *subdivision*,  
21 “construction” includes work performed during the design and  
22 preconstruction phases of construction including, but not limited  
23 to, inspection and land surveying work.

24 ~~(2)~~—

25 (b) Work done for irrigation, utility, reclamation, and  
26 improvement districts, and other districts of this type. “Public  
27 work” does not include the operation of the irrigation or drainage  
28 system of any irrigation or reclamation district, except as used in  
29 Section 1778 relating to retaining wages.

30 ~~(3)~~—



1 (c) Street, sewer, or other improvement work done under the  
2 direction and supervision or by the authority of any officer or  
3 public body of the state, or of any political subdivision or district  
4 thereof, whether the political subdivision or district operates under  
5 a freeholder's charter or not.

6 ~~(4)–~~

7 (d) The laying of carpet done under a building  
8 lease-maintenance contract and paid for out of public funds.

9 ~~(5)–~~

10 (e) The laying of carpet in a public building done under  
11 contract and paid for in whole or in part out of public funds.

12 ~~(6)–~~

13 (f) Public transportation demonstration projects authorized  
14 pursuant to Section 143 of the Streets and Highways Code.

15 ~~(b) For purposes of this section, “paid for in whole or in part~~  
16 ~~out of public funds” means all of the following:~~

17 ~~(1) The payment of money or the equivalent of money by the~~  
18 ~~state or political subdivision directly to or on behalf of the public~~  
19 ~~works contractor, subcontractor, or developer.~~

20 ~~(2) Performance of construction work by the state or political~~  
21 ~~subdivision in execution of the project.~~

22 ~~(3) Transfer by the state or political subdivision of an asset of~~  
23 ~~value for less than fair market price.~~

24 ~~(4) Fees, costs, rents, insurance or bond premiums, loans,~~  
25 ~~interest rates, or other obligations that would normally be required~~  
26 ~~in the execution of the contract, that are paid, reduced, charged at~~  
27 ~~less than fair market value, waived, or forgiven by the state or~~  
28 ~~political subdivision.~~

29 ~~(5) Money loaned by the state or political subdivision that is to~~  
30 ~~be repaid on a contingent basis.~~

31 ~~(6) Credits that are applied by the state or political subdivision~~  
32 ~~against repayment obligations to the state or political subdivision.~~

33 ~~(c) Notwithstanding subdivision (b):~~

34 ~~(1) Private residential projects built on private property are not~~  
35 ~~subject to the requirements of this chapter unless the projects are~~  
36 ~~built pursuant to an agreement with a state agency, redevelopment~~  
37 ~~agency, or local public housing authority.~~

38 ~~(2) If the state or a political subdivision requires a private~~  
39 ~~developer to perform construction, alteration, demolition,~~  
40 ~~installation, or repair work on a public work of improvement as a~~

1 ~~condition of regulatory approval of an otherwise private~~  
2 ~~development project, and the state or political subdivision~~  
3 ~~contributes no more money, or the equivalent of money, to the~~  
4 ~~overall project than is required to perform this public improvement~~  
5 ~~work, and the state or political subdivision maintains no~~  
6 ~~proprietary interest in the overall project, then only the public~~  
7 ~~improvement work shall thereby become subject to this chapter.~~

8 ~~(3) If the state or a political subdivision reimburses a private~~  
9 ~~developer for costs that would normally be borne by the public, or~~  
10 ~~provides directly or indirectly a public subsidy to a private~~  
11 ~~development project that is de minimis in the context of the~~  
12 ~~project, an otherwise private development project shall not~~  
13 ~~thereby become subject to the requirements of this chapter.~~

14 ~~(4) The construction or rehabilitation of affordable housing~~  
15 ~~units for low- or moderate-income persons pursuant to paragraph~~  
16 ~~(5) or (7) of subdivision (c) of Section 33334.2 of the Health and~~  
17 ~~Safety Code that are paid for solely with moneys from a Low and~~  
18 ~~Moderate Income Housing Fund established pursuant to Section~~  
19 ~~33334.3 of the Health and Safety Code or that are paid for by a~~  
20 ~~combination of private funds and funds available pursuant to~~  
21 ~~Section 33334.2 or 33334.3 of the Health and Safety Code do not~~  
22 ~~constitute a project that is paid for in whole or in part out of public~~  
23 ~~funds.~~

24 ~~(5) “Paid for in whole or in part out of public funds” does not~~  
25 ~~include tax credits provided pursuant to Section 17053.49 or~~  
26 ~~23649 of the Revenue and Taxation Code.~~

27 ~~(6) Unless otherwise required by a public funding program, the~~  
28 ~~construction or rehabilitation of privately owned residential~~  
29 ~~projects is not subject to the requirements of this chapter if one or~~  
30 ~~more of the following conditions are met:~~

31 ~~(A) The project is a self-help housing project in which no fewer~~  
32 ~~than 500 hours of construction work associated with the homes are~~  
33 ~~to be performed by the homebuyers.~~

34 ~~(B) The project consists of rehabilitation or expansion work~~  
35 ~~associated with a facility operated on a not-for-profit basis as~~  
36 ~~temporary or transitional housing for homeless persons with a total~~  
37 ~~project cost of less than twenty-five thousand dollars (\$25,000).~~

38 ~~(C) Assistance is provided to a household as either mortgage~~  
39 ~~assistance, downpayment assistance, or for the rehabilitation of a~~  
40 ~~single-family home.~~

1     ~~(D) The project consists of new construction, or expansion, or~~  
2 ~~rehabilitation work associated with a facility developed by a~~  
3 ~~nonprofit organization to be operated on a not-for-profit basis to~~  
4 ~~provide emergency or transitional shelter and ancillary services~~  
5 ~~and assistance to homeless adults and children. The nonprofit~~  
6 ~~organization operating the project shall provide, at no profit, not~~  
7 ~~less than 50 percent of the total project cost from nonpublic~~  
8 ~~sources, excluding real property that is transferred or leased. Total~~  
9 ~~project cost includes the value of donated labor, materials,~~  
10 ~~architectural, and engineering services.~~

11     ~~(E) The public participation in the project that would otherwise~~  
12 ~~meet the criteria of subdivision (b) is public funding in the form~~  
13 ~~of below-market interest rate loans for a project in which~~  
14 ~~occupancy of at least 40 percent of the units is restricted for at least~~  
15 ~~20 years, by deed or regulatory agreement, to individuals or~~  
16 ~~families earning no more than 80 percent of the area median~~  
17 ~~income.~~

18     ~~(d) Notwithstanding any provision of this section to the~~  
19 ~~contrary, the following projects shall not, solely by reason of this~~  
20 ~~section, be subject to the requirements of this chapter:~~

21     ~~(1) Qualified residential rental projects, as defined by Section~~  
22 ~~142 (d) of the Internal Revenue Code, financed in whole or in part~~  
23 ~~through the issuance of bonds that receive allocation of a portion~~  
24 ~~of the state ceiling pursuant to Chapter 11.8 of Division 1~~  
25 ~~(commencing with Section 8869.80) of the Government Code on~~  
26 ~~or before December 31, 2003.~~

27     ~~(2) Single-family residential projects financed in whole or in~~  
28 ~~part through the issuance of qualified mortgage revenue bonds or~~  
29 ~~qualified veterans' mortgage bonds, as defined by Section 143 of~~  
30 ~~the Internal Revenue Code, or with mortgage credit certificates~~  
31 ~~under a Qualified Mortgage Credit Certificate Program, as defined~~  
32 ~~by Section 25 of the Internal Revenue Code, that receive allocation~~  
33 ~~of a portion of the state ceiling pursuant to Chapter 11.8 of~~  
34 ~~Division 1 (commencing with Section 8869.80) of the~~  
35 ~~Government Code on or before December 31, 2003.~~

36     ~~(3) Low-income housing projects that are allocated federal or~~  
37 ~~state low-income housing tax credits pursuant to Section 42 of the~~  
38 ~~Internal Revenue Code, Chapter 3.6 of Division 31 (commencing~~  
39 ~~with Section 50199.4) of the Health and Safety Code, or Section~~

1 ~~12206, 17058, or 23610.5 of the Revenue and Taxation Code, on~~  
2 ~~or before December 31, 2003.~~

3 ~~(e) If a statute, other than this section, or a regulation, other than~~  
4 ~~a regulation adopted pursuant to this section, or an ordinance or a~~  
5 ~~contract applies this chapter to a project, the exclusions set forth~~  
6 ~~in subdivision (d) do not apply to that project.~~

7 ~~(f) For purposes of this section, references to the Internal~~  
8 ~~Revenue Code mean the Internal Revenue Code of 1986, as~~  
9 ~~amended, and include the corresponding predecessor sections of~~  
10 ~~the Internal Revenue Code of 1954, as amended.~~

11 ~~(g) The amendments made to this section by either Chapter 938~~  
12 ~~of the Statutes of 2001 or the act adding this subdivision shall not~~  
13 ~~be construed to preempt local ordinances requiring the payment of~~  
14 ~~prevailing wages on housing projects.~~

15 SEC. 3. This act is an urgency statute necessary for the  
16 immediate preservation of the public peace, health, or safety  
17 within the meaning of Article IV of the Constitution and shall go  
18 into immediate effect. The facts constituting the necessity are:

19 In order to alleviate the current state budget shortfall and  
20 improve the state's economy at the earliest possible time, it is  
21 necessary for this act to take effect immediately.

